

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

TERRY GLEN SHORTS,

Petitioner,

vs.

JOHN IGNACIO, *et al.*,

Respondents.

3:02-cv-0133-LRH-RAM

**ORDER**

This action is on a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254, by Terry Glen Shorts, a prisoner at the Ely State Prison, in Ely, Nevada. An order denying the petition and judgment was issued in this matter on February 16, 2005. *See* Order (docket #38) and Judgment (docket #39). On October 20, 2005, petitioner signed and presented for delivery to this court, a Motion for Belated Appeal/Motion for Relief From Judgment (docket #41). Petitioner filed a second such motion on December 12, 2005 (docket #44). Those motions shall be denied.

A court may grant relief from a final order or judgment upon a motion for clerical mistakes (Fed. R. Civ. Pro. 60(a)) or for mistakes, inadvertence, excusable neglect, newly discovered evidence, fraud, etc. (Fed. R. Civ. Pro. 60(b)), if the motion is brought in a timely manner and the assertions made as a basis to reconsider are shown to be true.

Petitioner seeks relief from the judgment and an opportunity to file a belated notice of appeal, citing excusable neglect and contending that his housing situation at the Ely State Prison has

1 interfered with his ability to prepare and file a timely notice of appeal. Petitioner further claims that  
2 he does not know how to prepare and file such a notice of appeal and was denied direct access to  
3 legal materials and law clerks to assist him with his efforts. Petitioner's criminal/legal history belies  
4 the last contention. The simplicity of preparing and filing a notice of appeal belies the first.

5       Additionally, the true substance of petitioner's motion is not one for relief from judgment,  
6 but rather more a motion to allow a belated notice of appeal. The Federal Rules of Appellate  
7 Procedure, which prescribe the time for filing a notice of appeal, permit a district court to extend the  
8 time for filing a notice of appeal, so long as that motion is received by the district court "no later  
9 than 30 days after the time prescribed by this Rule 4(a) expires; and . . .that party shows excusable  
10 neglect or good cause." Fed. R. App. Pro. 4(a)(5).

11       Petitioner has not filed his request in compliance with this rule.

12       **IT IS THEREFORE ORDERED** that the requests for Leave of Court to File a 'Belated'  
13 Notice of Appeal/Motion for Relief from Judgment - Pursuant to Fed. R. Civ. Pro. 60(b)" (dockets  
14 #41 and #44) are **DENIED**.

15       Dated this 5<sup>th</sup> day of January, 2006.



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19 LARRY R. HICKS  
20 UNITED STATES DISTRICT JUDGE  
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